
Judiciary Committee

SSB 5931

Title: An act relating to licensed mental health practitioner privilege.

Brief Description: Regarding licensed mental health practitioner privilege.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Murray, Delvin and Kline).

Brief Summary of Substitute Bill

- Establishes an evidentiary privilege for licensed mental health counselors, licensed marriage and family therapists, and licensed independent clinical social workers.
- Moves the provision requiring these providers to maintain the confidentiality of client information from the licensing chapter covering these providers to the chapter governing evidentiary privileges in legal proceedings.

Hearing Date: 3/25/09

Staff: Edie Adams (786-7180)

Background:

Mental health counselors, marriage and family therapists, and social workers are licensed by the Department of Health. Licensed social workers include independent clinical social workers and advanced social workers. These licensed providers must maintain the confidentiality of information received from their clients that was necessary in providing professional services to them. There are exceptions when: (1) the client authorizes the release; (2) the client brings charges against the licensee; (3) the Secretary of Health subpoenas the records; (4) the licensee must report child abuse, vulnerable adult abuse, or testimony and records at a probable cause hearing regarding involuntary detention; or (5) the licensee reasonably believes that disclosure will avoid or minimize an imminent danger to the client or another person.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Although this confidentiality statute contains a reference to "privilege," the statute does not explicitly state that there is an evidentiary privilege for client communications received by these licensed providers in the course of providing professional services to the client.

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law and statutory law recognize evidentiary or testimonial privileges as exceptions to compelled testimony. Privileges are generally disfavored in the common law because they impede the court's truth-finding function. Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected.

Washington statutory law establishes a number of privileges, including privileges for communications between the following persons: (1) clergy and penitent; (2) attorney and client; (3) spouses or domestic partners; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement and firefighter peer support counselor and a law enforcement officer or firefighter; and (8) sexual assault advocate or domestic violence advocate and victim.

Summary of Bill:

The provision requiring licensed mental health counselors, licensed marriage and family therapists, and licensed social workers to maintain the confidentiality of information received from their clients is removed from the licensing chapter covering these providers.

The statute governing evidentiary privileges in legal proceedings is amended to provide that licensed mental health counselors, licensed marriage and family therapists, and licensed independent clinical social workers may not disclose or be compelled to testify about information received from their clients that was necessary in providing professional services to them, subject to listed exceptions. Licensed advanced social workers are not covered by the privilege and the requirement to maintain the confidentiality of client information.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.